

FEDERAL CIRCUIT COURT OF AUSTRALIA

AYZ18 v MINISTER FOR HOME AFFAIRS

[2019] FCCA 2070

Catchwords:

MIGRATION – Application for review of a decision of a Ministerial delegate – where the delegate found the applicant provided a “bogus document” – whether delegate failed to take into account a relevant consideration – whether delegate made illogical and unreasonable findings – no jurisdictional error – application dismissed.

Legislation:

Migration Act 1958 (Cth), ss.5, 36, 46A, 66, 91WA, 476, 499

Cases cited:

AIB16 v Minister for Immigration & Border Protection (2017) 254 FCR 457
ARG15 v Minister for Immigration Border Protection [2016] FCAFC 174
Hossain v Minister for Immigration & Border Protection (2018) 92 ALJR 780
Minister for Immigration & Border Protection v MZYTS [2013] FCAFC 114
Minister for Immigration & Citizenship v Khadgi (2010) 190 FCR 248
Minister for Immigration & Citizenship v SZMDS (2010) 240 CLR 611
Minister for Immigration & Ethnic Affairs v Wu Shan Liang (1996) 185 CLR 259
NAHI v Minister for Immigration & Indigenous Affairs [2004] FCAFC 10
Tran v Minister for Immigration & Multicultural & Indigenous Affairs [2004] FCAFC 297

Applicant:	AYZ18
Respondent:	MINISTER FOR HOME AFFAIRS
File Number:	PEG 132 of 2018
Judgment of:	Judge Kendall
Hearing date:	8 May 2019
Date of Last Submission:	8 May 2019
Delivered at:	Perth
Delivered on:	31 July 2019

REPRESENTATION

Counsel for the Applicant:	Mr D Blades
Solicitors for the Applicant:	Chisholm Law
Counsel for the Respondent:	Ms R Graycar
Solicitors for the Respondent:	Sparke Helmore Lawyers

ORDERS

- (1) The applicant have leave to amend particular (b) of ground 1 of the application dated 16 April 2019 to the following terms:

On 1 September 2017 DFAT prepared a report entitled “DFAT Country Information Report Pakistan” (“DFAT Report”) for protection status determination purposes.

- (2) The applicant have leave to rely on the affidavit of Shayla Marie Strapps affirmed 5 March 2019.
- (3) The application, as amended, be dismissed.
- (4)
- (5)

FEDERAL CIRCUIT COURT

OF AUSTRALIA

AT PERTH

PEG 132 of 2018

AYZ18

Applicant

And

MINISTER FOR HOME AFFAIRS

Respondent

REASONS FOR JUDGMENT

Introduction

1. The applicant in these proceedings seeks judicial review under s.476 of the *Migration Act 1958* (Cth) (the “Act”) of a decision made by a delegate of the respondent, the Minister for Home Affairs (the “Minister”), to deny the applicant a Temporary Protection (subclass 785) visa (the “visa”).
2. The applicant filed an amended application in this Court with new grounds on 16 April 2019. It is uncontroversial that for the applicant to succeed in this Court he must demonstrate that one of the grounds in his judicial review application establishes jurisdictional error.
3. The Court had before it the detailed Court Book (“CB”) spanning 186 pages, written submissions from the applicant dated 24 April 2019 and written submissions from the respondent dated 1 May 2019.

4. This matter was heard on 8 May 2019. The Court was assisted by Mr Blades of Counsel for the applicant and Ms Graycar of Counsel for the Minister.

Background

5. The applicant (at [1]-[24]) and the Minister (at [1]-[7]) both provided a summary of the background to this matter in their written submissions. The Court has considered those summaries and cross-checked them with the materials in the Court Book. Those summaries are detailed and accurate. The Court adopts them (with some minor amendments) as follows.
6. The applicant arrived in Australia as an unauthorised maritime arrival on or around 31 March 2013 (CB 161). The applicant was interviewed by representatives of the Minister’s department on 26 April 2013 and 25 May 2013 (CB 1-6 and 8-25).
7. By letter dated 18 February 2016 (and another sent on 25 February 2016) , the Minister “lifted the bar” pursuant to s.46A of the Act (CB 26-37).
8. The applicant applied for the visa on 25 August 2013 (CB 38-80). Attached to that application was a statement of claims which provided as follows:
 - a) the applicant claimed to be a citizen of Afghanistan, of Hazara origin, but has lived in Pakistan since he was a small child (CB 77 at [15]);
 - b) he claimed to fear harm if returned to Afghanistan on the basis of his Shia religion (CB 79 at [27]) and Hazara ethnicity as his “appearance is distinctly Hazara” and he does not have protection from any family or friends in the Hazara community in Afghanistan (CB 78 at [20]);
 - c) he claimed not to know anyone who lives in Afghanistan (CB 79 at [28]) and does not believe he is able to relocate in Afghanistan because the risk of harm extends throughout the whole country; and

- d) he claimed he cannot relocate to Pakistan where he has lived most of his life and where his family (including his wife and young child) resides, as he is not a citizen of Pakistan (CB 80 at [31]).
9. By letter dated 7 September 2016, a Ministerial delegate requested that the applicant provide documentary evidence of his identity, nationality or citizenship (CB 81).
 10. The applicant did not respond to that request.
 11. On 15 November 2016, the applicant was invited to attend an interview with a Ministerial delegate (CB 91).
 12. The applicant attended an interview with a delegate on 7 December 2016. At the interview, he provided a copy of an Afghan Taskera (Identity card) purportedly issued in Quetta Pakistan in 2012 (the “Taskera”) (CB 102), what he claimed was a handwritten marriage certificate or “Mullah’s Certificate” (CB 103-106) and a translation of a marriage certificate that he said was issued from the Afghan Consulate in Quetta (the “Afghan Marriage Certificate”) (CB 144-145).
 13. By letter dated 7 December 2016, the applicant was invited to comment on the fact that the delegate reasonably suspected that the Taskera he had provided to the Department was a “bogus document” (as that term is defined in s.5(1) of the Act) (CB 107). The delegate invited the applicant to provide a reasonable explanation about why he produced a bogus document and was given an opportunity to either produce documentary evidence of his identity or take reasonable steps to produce that evidence (CB 108).
 14. The applicant’s representative provided a response to the delegate on 20 January 2017 indicating that the document was not bogus and was issued in Quetta. Attached to the response was a copy of what was described as the applicant’s father’s taskera and relevant translation (the “Father’s Taskera”) (CB 118-119).
 15. In February and August 2017, the delegate made a number of enquiries to a Forensic Document Examiner and to the Australian High Commission in Islamabad concerning the documents the applicant had provided (CB 120-132 and 135-141).

16. On 8 August 2017, the delegate wrote again to the representative seeking responses in relation to various identified inconsistencies and discrepancies in the documents and evidence provided by the applicant (CB 133). These inconsistencies pertained to the Afghan Marriage Certificate provided by the applicant and inconsistencies between certain details on the Taskera and the Father's Taskera. The delegate also asked for an explanation as to why, if it were found that Pakistan was the receiving country, the applicant feared returning there and, if he did, why he could not relocate within Pakistan to another area to avoid persecution (CB 133-134).
17. By letter dated 30 August 2017, the applicant's representative responded and provided a copy of the Afghan Marriage Certificate, a copy of an identity verification form (purportedly from Afghan authorities) and an amended translation of the Father's Taskera (CB 144-155). The responses to the questions asked by the delegate provided as follows:
 - a) in response to the question about why the details were different between the Taskera and the Father's Taskera, the agent responded that the applicant was not literate and was not aware of the processes implemented by the Afghan Consulate in Quetta for issuing taskeras. It was explained that the applicant took his Father's Taskera with him to obtain his own taskera and did not notice any discrepancy. He also indicated, for the first time, that he had obtained a second taskera after his marriage as the first one was lost and that is why it is dated after the date of his marriage; and
 - b) as for why he could not return to Pakistan, he reiterated that he was a citizen of Afghanistan and made submissions about the dangers of returning to Afghanistan (CB 149-151). The applicant concluded by stating that he feared harm in Pakistan from Lashkar-e-Jhangvi and other insurgent groups and reiterated that he "cannot relocate in Pakistan" (CB 155 at [19]).
18. The delegate's decision to refuse the visa was made on 30 January 2018. As the applicant had been found to have provided a "bogus document" by the delegate, the operation of s.5(1)(a)(vi) of the Act meant that he became an "excluded fast track review applicant". As a

result, the applicant had no right of review by the IAA or any other merits review body.

The Delegate's Decision

19. The delegate's decision is lengthy. It runs to 26 pages and is divided into 7 parts with two attachments (CB 166-191). The Court is satisfied that the Minister's submissions at [8]-[15] accurately summarise the delegate's decision. That summary was not disputed by the applicant and the Court adopts it as its own. It provides, relevantly, as follows.
20. The delegate rejected the application as the delegate found that there was no credible evidence to support the applicant's claim that he was an Afghan citizen born to undocumented refugees who live in Pakistan (CB 168).
21. In relation to the applicant's claim to be Afghani, rather than Pakistani, the delegate:
 - a) noted that the applicant demonstrated no knowledge of his family's Hazara tribal/clan roots in Afghanistan (CB 163);
 - b) referred to the applicant having claimed to have not had an identity card in Pakistan, although country information indicated that Proof of Registration ("PoR") cards are available to Afghans living in Pakistan (CB 163). The applicant had claimed that, despite not having any identification documents, he regularly commuted daily, which included passing through a number of checkpoints. He had claimed that he bribed his way through those checkpoints. When asked why he did not have a PoR card, the applicant said that his family had missed their opportunity to obtain them;
 - c) relied on country information to find that the applicant could have obtained a PoR card in Quetta, noting that he had attended school in Quetta. The delegate also noted that as he had rented accommodation in Quetta and had access to mobile phones and contacted his family daily via the internet, this further supported the view that the applicant did not originate from a family of undocumented Afghan refugees in Pakistan. The delegate concluded that the fact that the applicant had not applied for a

PoR supported the view that the applicant did not originate from the Afghan community in Quetta (CB 164). The delegate considered that had the applicant been a member of that community, he would have applied for a PoR card (CB 163-164); and

- d) found that the applicant was a Pakistani citizen who left Pakistan using his own genuine (Pakistan) passport (CB 168).

22. In relation to the finding that the applicant's Taskera was a bogus document, the delegate dealt with this issue as follows:

- a) the delegate set out a list of the documents provided by the applicant at the interview on 7 December 2016 (CB 165);
- b) the delegate found that the applicant had provided conflicting and inconsistent information throughout his dealings with the Department about the Taskera and how he had obtained it. This included stating at the interview that he had provided his family details to the Afghan authorities in Quetta, who then checked their records and issued the Taskera. However, after it had been put to him that country information challenged the availability of taskeras in that way (and he would at the very least require his father's taskera), his representative told the delegate (in the submission of 30 August 2017) that he used his Father's Taskera to obtain his own taskera. That submission also attached a copy of the Father's Taskera. It was noted that no explanation was provided for this conflicting account (CB 165-166);
- c) the visa application indicated that the applicant was issued with his Taskera and marriage certificate when he married his wife. It was noted that at the interview the applicant gave different information and the delegate noted that the documents he had provided at interview contained different dates. The applicant responded by stating that the Afghan Marriage Certificate had been recently issued and explained that the date on it was simply the date of the marriage. The delegate noted that the applicant gave different responses, and no explanation for the conflicting evidence, as to when his Taskera was issued (CB 165); and

- d) when the applicant provided his Father's Taskera it was noted that the registration details on that document were different from those identified on the Taskera where the father's identity information was provided. The applicant was asked for an explanation. His agent responded by stating that there was a translation error and a further translation was provided which had the same details as those on the applicant's Identity Verification Form purportedly issued by Afghan authorities in Canberra (CB 147). No explanation was provided for the difference between that information and the information on the Taskera, other than that the applicant was illiterate (which the delegate rejected) (CB 168).
23. The delegate then considered whether the applicant had provided a reasonable explanation for providing the bogus document. After considering the information provided at interview and in the representative's submissions, the delegate found that the applicant's Taskera was a counterfeit document and did not accept it had been genuinely issued by the Afghan authorities in Quetta (CB 166-167).
24. The delegate referred to country information about the prevalence of fraudulent documents that originate from Quetta (CB 167). The delegate placed no weight on the Identity Verification Form as the details on that form were inconsistent with those on the Taskera, including that the name on the Taskera was different from the name on the Identity Verification Form.
25. The delegate summarised his findings and concluded that the weight of evidence indicated that the applicant was a member of the indigenous Hazara community in Pakistan, reiterating that there was no credible evidence that the applicant was an Afghan citizen born to undocumented Afghan refugees who live in Pakistan. In support of that finding, the delegate made adverse credibility findings, including a finding that the applicant demonstrated a willingness to mislead, obscure the truth and change his accounts of his identity (CB 168).
26. The delegate also noted that the concerns raised were not about "simple inconsistencies or gaps in evidence that can be explained by stress, fear, misunderstanding, a differing recollection or interpreting error".

27. The delegate concluded that the applicant had provided false and misleading information about his biography and identity (CB 168).
28. Against this background, the delegate determined that the applicant had provided a bogus document and had no reasonable explanation for having done so. On that basis, the delegate concluded that the applicant's visa should be refused pursuant to s.91WA(1) of the Act (CB 167).
29. Notwithstanding those findings, the delegate proceeded to examine the applicant's claims for protection as if Pakistan were his receiving country (CB 168).
30. The delegate accepted that there were continuing attacks against Hazara Shia in the western city of Quetta targeting Hazara who travel outside Hazara enclaves (which the applicant claimed to do for work) (CB 173) but noted that there was no evidence that the applicant had ever come to the adverse attention of extremist groups (CB 174).
31. The delegate accepted that there was a real chance that the applicant would experience sectarian violence in Quetta, on account of his race, religion and perceived political opinion (CB 174).
32. The delegate then found that the real chance of harm did not apply to all areas of the country and considered the reasonableness of the applicant relocating within Pakistan: (CB 174-176).
33. The delegate concluded, in relation to the refugee assessment, that the applicant was "not a high profile Shia Hazara in respect of his political, religious or social status" and did not accept that there was a real chance that insurgents would target him as a consequence of his physical appearance in Karachi, Lahore or Islamabad (CB 176). For that reason, it was determined that the applicant did not meet the refugee criterion for the grant of a protection visa (CB 177).
34. The delegate then considered the complementary protection criterion and found, pursuant to s.36(2B)(a) of the Act, that it would be reasonable for the applicant to relocate to Islamabad, Karachi or Lahore in Pakistan (CB 180). On that basis, the applicant was found not to meet the complementary protection criteria. His application was, accordingly, refused.

35. Finally, the delegate determined that the applicant was an “excluded fast track review applicant” as he had, without reasonable explanation, provided a bogus document in support of his visa application (CB 182-183).

Judicial Review Application

36. The applicant relied on four grounds of review in an amended application filed 16 April 2019.
37. In relation to the amended application, the Court notes that the applicant, in support of ground one, initially sought to rely on a Department of Foreign Affairs and Trade (“DFAT”) country information report from Afghanistan dated 18 September 2017. However, as was later acknowledged by the applicant in his submissions filed on 24 April 2019, the reference in ground 1 was not intended to be a reference to the Afghanistan report. Rather, it was intended to be a reference to a DFAT country information report for Pakistan of 1 September 2017 (the “Pakistan DFAT Report”).
38. At the hearing of this matter on 8 May 2019, the applicant sought leave to amend particular 1(b) to refer to the Pakistan DFAT Report of 1 September 2017. The Minister did not object to the applicant amending particular 1(b). The Minister addressed the amendment in written submissions and the Court was satisfied that leave to make the amendment to particular (b) of ground 1 should be granted. An order to that effect will be made.
39. An affidavit of Shayla Marie Strapps affirmed 16 April 2019 annexed a copy of the incorrect report. It also annexed a copy of the transcript of interview before the delegate (“Transcript”). On 3 May 2019, a second affidavit affirmed by Shayla Marie Strapps was filed. This affidavit annexed a copy of the Pakistan DFAT Report. Leave to rely on the affidavit was not opposed. There will be a further order accordingly.
40. In preparing these reasons for judgment the Court has had regard to the materials referred to in the Court Book, all affidavits, the extensive written submissions filed by both parties and the transcript of the hearing before the Court on 8 May 2019.

Ground 1

41. Ground 1, as amended, reads as follows:

The Delegate made a jurisdictional error by failing to take into account a country information assessment prepared by the Department of Foreign Affairs and Trade (DFAT) expressly for protection status determination purposes.

Particulars

- a. *On 21 June 2013, the Minister for Immigration and Citizenship gave a Direction under s 499 of the Act (Direction No. 56) requiring decision makers to take into account a country information assessment prepared by DFAT expressly for protection status determination purposes.*
- b. *On 18 September 2017 DFAT prepared a report entitled “DFAT Country Information Report Pakistan (sic.)” (“DFAT Report”) for protection status determination purposes.*
- c. *In the DFAT Report, it was stated at paragraph 3.9: “Credible sources told DFAT that Afghans are typically able to access Afghan identity information, including Taskeras, from the Afghan Embassy in Islamabad. DFAT was unable to obtain specific information about whether Afghans, including Hazaras, can access formal documentation through the Afghan Consulate in Quetta, but DFAT considers it plausible that they can.”*
- d. *In finding that he did not accept that the applicant’s Taskera was genuinely issued by the Afghan authorities in Quetta (CB 167), the Delegate failed to take into account relevant information in the DFAT Report at paragraph 3.9 concerning the issue of Afghan identity information through the Afghan Embassy in Islamabad and the Afghan Consulate in Quetta.*

Applicant’s submissions

42. In relation to ground 1, the applicant submitted as follows in written submissions:

- a) the delegate made a jurisdictional error by failing to take into account the Pakistan DFAT Report;
- b) section 499(2A) of the Act requires a person or body (which includes the delegate) to comply with ministerial directions made under s.499(1) of the Act. Ministerial Direction No. 56 of 21 June 2013 (“Direction No.56”), which is made under s.499(1) of the Act, requires a decision-maker to take into account a country information report prepared by DFAT for the purposes of protection status determination;
- c) the delegate took the view from the outset that country information indicated it was not possible to obtain a taskera outside Afghanistan in the manner that the applicant had described. The delegate did not waiver from this view despite:
 - i) the finding of the Forensic Document Examiner that there were no irregularities regarding the Taskera (CB 120). The Examiner did qualify their finding by saying the examination was “limited as the method of manufacture cannot be checked, and only an examination of the original document will determine this”. It does not appear, however, that the delegate or case officer instigated any further independent inquiries as to the genuineness of the Taskera;
 - ii) the statement from the Australian High Commission in Islamabad Pakistan that a marriage certificate can be obtained from the Afghanistan Consulate in Quetta provided that the four requirements regarding documents and witnesses are met (CB 138-139); and
 - iii) the country information cited by the delegate at CB 167, fn.24, that: “...all Afghans are *‘required to return to their family’s place of residence, or to Kabul, to apply for [a] Tazkera’*”. In this case, the applicant did apply for the Taskera in his family’s place of residence, which was Quetta, a town located near the Pakistan-Afghanistan border, and which is a trade and communication centre between the two countries;

- d) the DFAT Country Information Report Afghanistan of 15 September 2015, which was referenced by the delegate at fn.27 (CB 167), stated at [5.37], “... *Nonetheless, Afghan documentation including Taskeras, handwritten passports or other official Afghan documentation originating from Quetta in Pakistan should be independently verified due to the high incidence of fraud.*” This report does not state that the Afghan Consulate in Quetta did not have the authority to issue taskeras. As noted above, the independent verification process of the Taskera copy produced the finding that it contained no irregularities of concern (CB 120);
- e) the information in [3.9] of the Pakistan DFAT Report came from a credible source. It was in contrast to the other non-DFAT information cited by the delegate to the effect that taskeras were not issued outside Afghanistan; and
- f) under s.499 of the Act and Direction No.56, the information at [3.9] of the Pakistan DFAT Report was a mandatory relevant consideration for the delegate in deciding whether or not the Taskera was genuine and the delegate’s failure to take this information into account constituted a jurisdictional error.

43. In oral submissions Mr Blades for the applicant added the following in support of ground 1:

- a) the delegate must take into account [3.9] of the Pakistan DFAT Report because the objective of Direction No.56 is to guide decision-makers performing functions or exercising powers and it requires the decision-maker to take into account the actual information that is given in the report that is relevant to the decision under review;
- b) the delegate must reference [3.9] of the Pakistan DFAT Report as the content is right on point and it could not be any clearer on the issue about whether the Quetta Consulate issues documents to Afghans who are living in Pakistan;
- c) the delegate is required to reference that particular paragraph, otherwise a direction under s.499 would be meaningless. If a

country report deals with a particular subject matter and there is a point that goes directly to a question that the delegate is considering in deciding whether or not to grant a visa, then the delegate must reference the actual paragraph of the country information report that is specific and on point;

- d) paragraph 3.9 is a specific reference to whether the Quetta Consulate issues taskeras, and there was information in the Pakistan DFAT Report that squarely addressed that question and it was not sufficient for the delegate to merely globally reference that report;
- e) the two paragraphs of the Pakistan DFAT Report that the delegate did reference relate to other issues and concerned the levels of violence in Pakistan and whether the applicant could relocate there within Pakistan. Hence, to the extent that the delegate did refer to country information in the Pakistan DFAT Report that information had no bearing at all on the question of whether the Quetta Consulate issued taskeras;
- f) in the wording of Direction No.56, the objective is to guide decision-makers in performing functions. Direction No.56 is grounded in the language of rationality and the only rational approach for a decision-maker to take is to consider DFAT information that is on point. If this means referencing a specific paragraph the logical approach has to be for it to reference that specific paragraph;
- g) in this case, if the delegate had referenced that paragraph, it still might have resulted in the same decision. Nonetheless, the delegate was duty bound to take that paragraph into account to;
- h) administrative decision-making should be based on the most up-to-date information. In this case, the information that the delegate did reference on the question of whether the Quetta Consulate issues taskeras predated the Pakistan DFAT Report. Hence, the delegate was duty bound to take that into account the Pakistan DFAT Report – not only because of s.499, but also because of it being the most up-to-date information; and

- i) the country information could have led to a different outcome because it indicated that the Quetta Consulate did or may issue taskeras. While the delegate still might have decided that the Taskera was a bogus document, had [3.9] of the Pakistan DFAT Report been considered, it could have led to a different outcome.

Minister's submissions

44. In relation to Ground 1, the Minister submitted:

- a) it is apparent from fnn.49-50 at CB 174-175, fn.75 at CB 176 and fn.92 at CB 178 that, contrary to the ground as pleaded, the delegate did, in fact, reference the Pakistan DFAT Report. On that basis alone, the pleaded ground cannot succeed;
- b) the obligation that arises pursuant to Direction No.56 is to take the Pakistan DFAT Report into account. It is not to decide any issue in any particular way. Nor can any particular statement in a report be treated as something that a decision-maker is bound to take into account unless, for example, it can be shown that the particular matter was determinative;
- c) nothing in Direction No.56 affects the established role of the decision-maker as the trier of fact in relation to the evaluation and assessment of the information in a report that the decision-maker takes into account;
- d) the weight to be given to country information (including country information taken into account pursuant to a direction made under s.499) is a matter for the decision-maker;
- e) the mere fact that the delegate did not refer to the specific comment at [3.9] of the Pakistan DFAT Report, while doubting the applicant's account of how he obtained his Taskera, cannot of itself give rise to jurisdictional error;
- f) that finding of fact, subject to considerations of legal unreasonableness, was a matter for the decision-maker. It is also well established that there is no obligation on a delegate, where there is no statutory obligation to provide reasons in any particular form, to set out in a statement of reasons a reference to,

much less a finding on, every aspect of each item of evidence before it; and

- g) the delegate gave a number of cogent reasons for finding that the Taskera was a bogus document. There was substantial evidence before the delegate for that finding and the mere fact that the information in [3.9] of the Pakistan DFAT Report was different to other information before the delegate does not establish jurisdictional error, particularly in circumstances where the factual matter it goes to could not be said to have been determinative.

45. In oral submissions, Ms Graycar for the Minister reiterated the Minister's submission that:

- a) what is required by Direction No.56 is that the delegate consider what is "relevant". This does not enliven an obligation to refer to any particular paragraph concerning a matter that may be in issue before the delegate;
- b) had the delegate acknowledged what was said in [3.9] the outcome would have been no different because the real basis for the finding that the Taskera was bogus was the inconsistency in the applicant's accounts; and
- c) there were a number of elements of the applicant's story about how he obtained the Taskera that the delegate found not credible. Hence, had it been acknowledged that it was possible to have obtained the Taskera at the Consul in Quetta, it would not have made any difference.

Consideration

46. There is no dispute that the delegate was required to comply with Direction No.56 and that a failure to do so can amount to jurisdictional error: Act, s.499(2A).

47. Direction 56 stated:

Where the Department of Foreign Affairs and Trade has prepared a country information assessment expressly for protection status determination processes, and that assessment is available to the

decision maker; the decision maker must take into account that assessment, where relevant, in making their decision.

48. As outlined by the Minister, it is clear here that the delegate referenced the Pakistan DFAT Report. Counsel for the applicant acknowledged this in oral submissions. The issue the Court must consider is whether the delegate failed to take into account “relevant information” in that report, specifically [3.9], and whether this “failure” constitutes a breach of Direction No.56, resulting in jurisdictional error.

49. Paragraph 3.9 of the Pakistan DFAT Report reads:

3.9 The majority of Hazaras in Pakistan have lived there for decades, are Pakistani citizens and can access formal identification such as Computerised National Identity Cards (CNICs). Hazara children born in Pakistan also have Pakistani citizenship. More recent Hazara arrivals from Afghanistan typically do not have citizenship, but tend to have access to formal documentation in the form of immigration cards, which provides some rights such as access to drivers’ licences. Credible sources told DFAT that Afghans are typically able to access Afghan identity documentation, including Taskeras, from the Afghan Embassy in Islamabad. DFAT was unable to obtain specific information about whether Afghans, including Hazaras, can access formal documentation through the Afghan Consulate in Quetta, but DFAT considers it plausible that they can.

50. The delegate stated as follows (CB 166):

After carefully considering all the available evidence which includes concerns regarding his claimed identity and nationality discussed throughout this Identity Assessment, I reasonably suspect that the applicant’s Taskera is a counterfeit document as defined by s5(1)(b) of the Act – I do not accept it was genuinely issued by the Afghan authorities in Quetta. Information before the Department (located in document ‘ISU124-Advice from Islamabad Post’) indicates that Afghan Consulates do not hold the authority to issue Taskeras. I am also aware that all Afghans are required to ‘return to their family’s place of residence, or to Kabul, to apply for [a] Tazkera’. As country information indicates Taskeras are only issued inside Afghanistan and the applicant claimed he was issued with a Taskera from the Afghan Consulate in Quetta, Pakistan, I find his Taskera is not a genuine document.

(Footnotes omitted)

51. The delegate referred to two country information sources. One was a report from the “Country of Origin Information Section” dated 22 December 2016. The other was a report compiled by the “Canadian IRB: Immigration and Refugee Board of Canada” dated 20 February 2017. Both reports specifically addressed the issuance of taskeras and, in relation to the former report, whether they could be issued in Quetta.
52. It appears that the basis for the applicant’s assertion in this ground is the fact that the delegate does not specifically reference or footnote a particular paragraph of the Pakistan DFAT Report when making the finding that the Taskera was not a genuine document; hence, the applicant asserts, it can be inferred that the delegate did not consider relevant information.
53. To succeed in relation to this ground of review, the applicant must satisfy the Court that, having regard to all of the evidence and other material before the delegate, it can be inferred that relevant information was not taken into account: *Minister for Immigration & Citizenship v Khadgi* (2010) 190 FCR 248 at [71].
54. Here, the applicant has failed to satisfy the Court that this is the case.
55. The delegate expressly referred to the materials in the Pakistan DFAT Report. At CB 174 the delegate states as follows:

There are reports that Pakistani Hazaras may have their identity documents arbitrarily cancelled as part of a campaign more generally to cancel fraudulent documents. DFAT has assessed that there is no credible evidence of this and assess, in their latest Country Information Report, that such cancelations are unlikely to occur based on the ethnicity or religion of Hazaras

56. The delegate footnotes page 14 of the Pakistan DFAT Report in relation to the above statement. The Court has had regard to page 14 of the Pakistan DFAT Report and cannot ascertain where the material the delegate refers to is identified on that page. However, on page 13 of the Pakistan DFAT Report, and relevantly [3.10] of the Pakistan DFAT Report, the following information is detailed:

3.10 DFAT is aware of some news reports claiming that Pakistani Hazaras are having their CNICs systematically cancelled, effectively removing their rights to citizenship and residency

in Pakistan. DFAT is not aware of any credible evidence to support these claims. The National Database and Registration Authority (NADRA) is currently engaging in a campaign to target fraud in relation to CNICs. This campaign targets fraud in a general sense rather than in relation to any particular ethnic group. DFAT understands that that NADRA has identified several thousand fraudulent records in this process, including examples of Afghans who had been added to household registration lists without authorisation. DFAT assesses that Hazaras who are Pakistani citizens are unlikely to have their CNICs cancelled based on their ethnicity or religion.

57. This information was on the same page as, and immediately following, [3.9], the paragraph alleged not to have been taken into account by the delegate.
58. In these circumstances, the Court is not prepared assume that the delegate did not have regard to [3.9]. Rather, the Court infers that the delegate simply did not afford that particular paragraph any weight.
59. There is no dispute that the information in [3.9] was relevant; however, it was for the delegate to decide what weight it would attach to that information in light of the other materials before it: *NAHI v Minister for Immigration & Indigenous Affairs* [2004] FCAFC 10 at [11] (“*NAHP*”). The Court does not accept that as [3.9] was “directly” relevant to the question before the delegate that that meant that the delegate was required, by virtue of s.499(2A), to specifically refer to it.
60. Direction No.56 was a “guide”. It was not intended to dictate what findings should or should not be made: *Tran v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCAFC 297 at [5]. Nor does it suggest that DFAT information should be given higher credence than any other information. The delegate clearly had regard to the Pakistan DFAT Report. The fact that the delegate did not refer to or rely on a specific paragraph that is “relevant” to one aspect of its decision was entirely a matter for the delegate in light of all the evidence before the delegate.
61. The Minister also submits that there is no statutory obligation obliging the delegate to provide reasons about why a particular piece of evidence is not relied on.

62. Section 66(2) of the Act states that, where an application is refused, the delegate must specify the criterion that was not met or the provision which prevented the applicant from being granted the visa. Section 66(2)(c) states that the delegate must give “written reasons” unless subsection (3) applies (which it does not in this case). The term “written reasons” is not defined. However, bearing in mind the content of the “written statements” required from the Administrative Appeals Tribunal and Immigration Assessment Authority, it can be concluded that a delegate’s decision should generally:
- a) set out the reasons for the decision; and
 - b) set out the findings on any material questions of fact; and
 - c) refer to the evidence or any other material on which the findings of fact were based.
63. The Minister operated on this assumption. The Court has done the same.
64. In the circumstances, the delegate is not required to refer to every piece of evidence – only the evidence that was relied upon in making the relevant finding of fact. Here, the delegate did that. It referred to “ISU124 – Advice from Islamabad Post” and the report by the Canadian Immigration Review Board and the Country of Origin Information Section. Paragraph 3.9 of the Pakistan DFAT Report, while of some evidential value, can be reasonably inferred not to have been material to the conclusion the delegate reached in light of all the inferential evidence. It cannot be said on the evidence that it simply was not considered. An assessment as to the weight was inferably undertaken and other information was preferred. There is no error in this regard.
65. The material that was deemed relevant and material to the delegate’s conclusion was explicitly referenced. That is, “ISU124 – Advice from Islamabad Post” and the reports.
66. The information in ISU124 – Advice from Islamabad Post was information directly obtained from a source at the Afghan Consulate in Quetta. The information provided as follows:

According to the information obtained from our contact in Afghan Consulate General Quetta. Tazkira's can only be obtained from Afghanistan. Consulates never issue Tazkiras. Tazkira number should be identical doesn't matter on which document it is written. It always remains the same.

NOTE:

If Tazkira was issued from Afghan Consulate General Quetta then it does not hold any authenticity as we have confirmed it previously that they does not hold any authority to issue Tazkiras as they can only be issued from Afghanistan.

67. (CB 136)
68. This information was obtained for the specific purpose of conducting the applicant's review. It was thus relevant, and specific, to the delegate's consideration. The fact that the delegate placed more weight on it was a matter for the delegate: *NAHI* at [11]. So too was the delegate's reliance on other sources, as these sources corroborated the more specific evidence the delegate had obtained in the ISU124 – Advice from Islamabad Post.
69. In relation to the footnoted sources, the applicant referred to *Minister for Immigration & Border Protection v MZYTS* [2013] FCAFC 114 at [73] (“*MZYTS*”) to suggest that the delegate had regard to out-of-date country information and that, as such, the delegate “erred”.
70. The applicant is correct when he notes that the country information cited does predate the DFAT Pakistan Report. The ISU124 – Advice from Islamabad Post was dated 10 August 2017. This too was prior to the DFAT Pakistan Report.
71. The Court notes what was stated at [74] in *MZYTS*:
- That is not to say decision-makers cannot rely on information which is several years old. They may do so lawfully as part of a weighing process after considering all information available to them, and deciding which information best and most reliably supports the prediction of future risk they are called on to make. Perhaps more recent information simply confirms older and more detailed information. Perhaps the older information is more specific to the visa applicant's circumstances. Perhaps more recent information is from less reliable, or tainted, sources. There*

are many possibilities about why a decision-maker may choose, lawfully, to rely on older information and still perform the task required by s 36(2)(a) and Art 1. In such cases, one would expect the Tribunal's reasons to disclose this kind of evaluation process, and the conclusion it reached would be within its jurisdiction.

72. Here, it is noted that the Pakistan DFAT Report stated that “DFAT was unable to obtain specific information” but considered it “plausible” that the documents could be obtained for the Quetta Consulate. In contrast, the delegate had *specific information* that appeared to confirm the country information in older and more detailed reports (being those cited in fn.24) that documents could not be obtained from the Quetta Consulate.
73. In these circumstances, there is no error evident in the delegate relying on information which pre-dated the Pakistan DFAT Report.
74. The Court has not overlooked the final sentence of [74] in *MZYTS* which states that one would expect an evaluation process of some sort.
75. It is clear here from the delegate’s decision that an evaluative assessment has been undertaken. The delegate refers to ISU124 – Advice from Islamabad Post and then cites the country information that supports that advice. That the delegate did not refer to [3.9] does not suggest the delegate did not evaluate the information in that particular paragraph. Rather, it suggests that the delegate was simply of the view that [3.9] was of little or no weight and that other information available was to be afforded more weight.
76. Further, insofar as the applicant contends that the DFAT information was a credible source and that the other information (being non-DFAT information) impliedly was not, this argument also fails. This amounts to no more than a disagreement with the country information relied upon: *NAHI* at [11].
77. It is noted that the Minister emphasised that it is not the case that had [3.9] of the Pakistan DFAT Report been taken into account it would have been dispositive to the main issue. In response, the applicant contended that the question on judicial review is whether taking the paragraph into account “could” have led to a different outcome and not that it “would” have led to a different outcome.

78. It is unnecessary for the Court to consider this argument as the Court is satisfied that the delegate has considered the information the applicant refers to. It simply attached no weight to that paragraph, as was its prerogative. It is noted, however, that in *Hossain v Minister for Immigration & Border Protection* (2018) 92 ALJR 780 at [73]-[74], Edelman J stressed that the usual consideration of materiality looks backwards to whether the error *would* have made any difference to the result. Here, the Court agrees that even if the delegate had not considered [3.9], the outcome would have been no different because the real basis for the finding that the Taskera was bogus was the inconsistency in the applicant's accounts. Overall, there were a number of elements in the applicant's story about how he obtained the Taskera that the delegate found to be lacking in credibility. Hence, had the delegate failed to acknowledge one source of information that said that it was possible to have obtained the Taskera at the Consul in Quetta, this would not have made any difference to the findings overall.

79. Ground 1 fails to identify jurisdictional error.

Ground 2

80. Ground 2 of the application, as amended, pleads:

The Delegate's decision is tainted by jurisdictional error in that the Delegate relied on an illogical finding to reach the conclusion that the applicant had provided a bogus document to the Department in relation to his identity, nationality or citizenship.

Particulars

a. *The Delegate stated at CB 165-166 that he was satisfied that the Afghan Taskera (CB 102) is a bogus document on the basis of the information that the registration details (Book Number, Page Number and Record Number) on the applicant's Taskera differed to the registration details stated on his father's Taskera (CB 119/146).*

b. *In the applicant's Taskera (CB 102) it was stated that:*

i. *The applicant's age was "24-years-old in 1391 of Persian year (1391 covers 21 March 2012-20 March 2013)"*

- ii. *the Book Number was “Volume 11 of male records for the year 91”*
 - iii. *the Page Number was 78*
 - iv. *The Record Number was 158*
 - v. *The Father’s Registration Number was Volume 13 Page 28 Record 917.*
- c. *The applicant supplied a document entitled “Birth Certificate – IDENTITY BOOK” in respect of his father (CB 119/146), on which was written: “Book No. 17 Page No. 1 Registration No. 2 (see amended version at CB 146).*
 - d. *The document that the Delegate treated as the applicant’s father’s Taskera was in fact a birth certificate, not a Taskera, that contained a record of the applicant’s father’s age established in 1975.*
 - e. *The Delegate’s finding that the registration details on the applicant’s father’s birth certificate had to be consistent with the Father’s Registration No. on the applicant’s Taskera in order to establish the genuineness of the applicant’s Taskera was illogical.*

Applicant’s submissions

81. In support of the applicant’s second ground of review, the applicant argued that:
- a) at the interview, the applicant provided the delegate with what the delegate described as “A copy of a Taskera purporting to belong to his father and an associated NAATI Translation”;
 - b) the amended version of the Father’s Taskera contains the following information: “Book No. 17 Page No. 1 Registration No. 2”. The delegate regarded these details as constituting the registration details for the Father’s Taskera. These differed from the information on the Taskera;
 - c) the delegate asked the applicant’s migration agent to explain why the registration details on the Taskera differed to the registration details stated on his Father’s Taskera. The delegate commented in

his decision that the agent's submission of 30 August 2017 (CB 148-149) provided no explanation as to why the registration details on the Taskera are not consistent with the registration details stated on the Father's Taskera;

- d) the delegate's ultimate finding that the Taskera was a bogus document rested in part on the finding that the registration details on the respective taskeras of the applicant and his father were not consistent. There is, however, an obvious reason as to why the registration numbers on the two documents are not consistent;
- e) this reason is that the document that the delegate treated as the Father's Taskera is, in fact, a birth certificate. The only logical conclusion that can be drawn regarding that number is that it is a record number of the birth certificate that was issued for the applicant's father in 1975. It is not the registration number for the Father's Taskera;
- f) in contrast, the Taskera clearly identifies the father's registration number and this can only be a reference to the registration number on the father's actual taskera; and
- g) the document that the applicant provided, however, was his father's birth certificate, not his taskera, and it was illogical for the delegate to proceed on the basis that the numbers given on the documents had to be identical. This was a lapse in logic that gives rise to jurisdictional error.

82. In oral submissions the applicant submitted:

- a) the delegate made an illogical finding along the way to the final decision that the numbers on the Taskera and what was presented as the Father's Taskera had to match;
- b) the delegate had to assess the information for itself and it was not sufficient to uncritically accept the migration agent's characterisation of the document; and
- c) the Federal Court has repeatedly emphasised that the boundary between merits review and illogicality reviews is not clear, but this is one of these rare cases where the Court should find that the

document on its face was purporting to be a birth certificate and the delegate ought to have turned his mind to the fact that it was a birth certificate.

Minister's submissions

83. The Minister's submissions in relation to ground 2 can be summarised as follows:

- a) the applicant contends that the document that he provided as his Father's Taskera was in fact a birth certificate and that the inconsistency found by the delegate was thus illogical;
- b) the difficulty with this ground is that the document was presented to the delegate as the Father's Taskera;
- c) moreover, in the second letter to the applicant seeking further explanation as to the discrepancy he was again asked about his Father's Taskera and the response did not at any time take issue with that description;
- d) to seek now to have this Court find that there is no inconsistency because the document was something other than what the applicant described it as when presented is to ask this Court to engage in impermissible merits review; and
- e) put simply, the finding made by the delegate about the inconsistency between the information on the Taskera and that on the Father's Taskera was manifestly open on the information put to the delegate, including the responses of his professional representative.

84. The Minister's oral submissions were as follows:

- a) the Father's Taskera was not referred to as a birth certificate and when the country information that suggested you needed at least the father's taskera to obtain your own was put to the applicant, nothing was raised as an issue in need of consideration;
- b) there is no doubt that the translation says "birth certificate"; however, this does not undermine that it was presented as the Father's Taskera; and

- c) if the applicant was poorly represented by his migration agent, that is an issue between him and his migration agent. While regrettable, the delegate cannot be found to have acted irrationally or illogically by relying on information incorrectly put to the delegate by a representative who purports to act on behalf of an applicant.

Consideration

85. The test for irrationality or illogicality has been summarised in *Minister for Immigration & Citizenship v SZMDS* (2010) 240 CLR 611 (“SZMDS”) (per Crennan and Bell JJ) as follows:

130. *In the context of the Tribunal’s decision here, “illogicality” or “irrationality” sufficient to give rise to jurisdictional error must mean the decision to which the Tribunal came, in relation to the state of satisfaction required under s 65, is one at which no rational or logical decision maker could arrive on the same evidence. In other words, accepting, for the sake of argument, that an allegation of illogicality or irrationality provides some distinct basis for seeking judicial review of a decision as to a jurisdictional fact, it is nevertheless an allegation of the same order as a complaint that a decision is “clearly unjust” or “arbitrary” or “capricious” or “unreasonable” in the sense that the state of satisfaction mandated by the statute imports a requirement that the opinion as to the state of satisfaction must be one that could be formed by a reasonable person. The same applies in the case of an opinion that a mandated state of satisfaction has not been reached. Not every lapse in logic will give rise to jurisdictional error. A court should be slow, although not unwilling, to interfere in an appropriate case.*

131. *What was involved here was an issue of jurisdictional fact upon which different minds might reach different conclusions. The complaint of illogicality or irrationality was said to lie in the process of reasoning. But, the test for illogicality or irrationality must be to ask whether logical or rational or reasonable minds might adopt different reasoning or might differ in any decision or finding to be made on evidence upon which the decision is based. If probative evidence can give rise to different processes of reasoning and if logical or rational or reasonable minds might differ in respect of the conclusions to be drawn from*

that evidence, a decision cannot be said by a reviewing court to be illogical or irrational or unreasonable, simply because one conclusion has been preferred to another possible conclusion.

...

135 *...Whilst there may be varieties of illogicality and irrationality, a decision will not be illogical or irrational if there is room for a logical or rational person to reach the same decision on the material before the decision maker. A decision might be said to be illogical or irrational if only one conclusion is open on the evidence, and the decision maker does not come to that conclusion, or if the decision to which the decision maker came was simply not open on the evidence or if there is no logical connection between the evidence and the inferences or conclusions drawn.*

(Emphasis added)

86. The applicant argues here that the document that was provided by the applicant as his Father's Taskera was, in fact, a birth certificate and that the inconsistency found by the delegate was therefore illogical.
87. The Court notes that:
- a) although the translated document says "Birth Certificate", the document was presented to the delegate as being the Father's Taskera;
 - b) an email dated 8 August 2017 asked the applicant to comment on the Father's Taskera as follows:

*As part of your submission dated 20 January 2017 **you provided a copy of his father's Afghan Taskera.** Please explain why the registration details stated on Mr [applicant]'s Taskera differ to the registration details provided **on his father's Taskera** (i.e. Book Number, Page Number and Record Number)?*

(Emphasis added)

- c) the applicant's representative's responded to the e-mail as follows:

*Please note that the applicant is not literate and cannot read or write. He is not aware of the processes implemented by the Afghanistan Consulate in Quetta to issue the teskaras. He had taken his **father's taskara** with him to obtain his own taskara and did not notice the discrepancy. In fact there was also a translation error in **his father's taskara submitted to DIBP** which was not picked up by the applicant. It was only pointed out to him while submitting the verification form to The Afghanistan Consulate in Canberra. Since then the translator has been approached again and an amended translation of **the applicant's father's taskara** is enclosed as Annex-2. The Registration number has been amended from 3 to 2. Please also note that the previous translation mentions the district as Damchopan. It is actually Daichopan and has also been corrected in the amended translation.*

(Emphasis added)

88. The Court notes that the applicant's representative's response did not take issue with the description of the document as a "taskera". Nor did it state that the document was a birth certificate. Nor did it explain that this was why there was a discrepancy between the taskeras.
89. In these circumstances, the applicant (via his representative) was on notice that this was a determinative issue and the delegate was acting on the basis that the document was not a birth certificate but, rather, the Father's Taskera. The opportunity to correct that assumption was at that time. No attempt to do so was undertaken by the applicant's migration agent.
90. Here, the applicant is now seeking to provide an explanation for a discrepancy between the documents. That explanation was not before the delegate. The Court agrees with the Minister that to seek to have the Court now find that there is no inconsistency because the document was something other than what was presented to the delegate is to ask this Court to engage in impermissible merits review. This Court cannot do so: *Minister for Immigration & Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 272.
91. The Court is satisfied that the finding made by the delegate regarding the inconsistency between the information on the information on his Taskera and that on his Father's Taskera was open on the information

put to the delegate, including the response provided by the applicant's professional representative.

92. The Court is not satisfied that the ground of illogicality has been made out in relation to ground 2.

Ground 3

93. Ground 3 of the amended application provides:

The Delegate's decision is tainted by jurisdictional error in that the Delegate relied on an illogical finding to reach the conclusion that the applicant had provided a bogus document to the Department in relation to his identity, nationality or citizenship.

Particulars

- a. *The Delegate stated at CB 165-166 that he was satisfied that the Afghan Taskera (CB 102) is a bogus document on the basis that the applicant had provided conflicting evidence regarding how he obtained his Afghan Marriage Certificate (CB 144-145).*
- b. *The applicant stated in his Statement of Protection Claims (CB 76-80) that:*
 - i. *he was issued a Taskera and a marriage certificate when he married his wife by the Afghanistan Consulate General in Pakistan (CB 77 at [9]);*
 - ii. *a copy of his Taskera was sent directly to the Department via email (CB 77 at [11]);*
 - iii. *his wife sent his marriage certificate to Australia from Pakistan a few days ago (CB 77 at [12]).*
- c. *The applicant told the Delegate at the interview conducted on 7 December 2016 that:*
 - i. *the Taskera was issued in 2011 or 2012, a few months before he came to Australia;*
 - ii. *the marriage certificate had been recently issued and his wife had been able to go to the Quetta Consulate to get it.*

- d. *In the decision record, the Delegate stated (CB 166, first paragraph, fourth sentence): “At his TPV interview the applicant indicated his Taskera was issued after his Marriage Certificate by the Afghan Consulate in Quetta...”*
- e. *The transcript of the TPV interview shows that the applicant did not indicate that his Taskera was issued after his Marriage Certificate by the Afghan Consulate in Quetta – he stated, rather, that the Taskera had been issued in 2011 or 2012 and that the Marriage Certificate had been issued “recently”.*
- f. *The Delegate’s finding that there was conflicting evidence provided by the applicant regarding how he obtained his Afghan Marriage Certificate was illogical because there is no conflict concerning this issue evident in the applicant’s written Statement of Protection Claims, the other submissions provided on his behalf (CB 118; 148-151 at 148, paragraph 1) and the oral evidence given by the applicant at the TPV interview.*

Applicant’s submissions

94. In support of ground 3, the applicant submitted:
- a) an examination of the evidence provided by the applicant as to how he obtained his Afghan Marriage Certificate shows that the evidence he provided is not conflicting;
 - b) the applicant’s evidence as to how he obtained the Afghan Marriage Certificate was given in his statement of protection claims that was part of his protection visa application (CB 77 at [9] and [12]), the interview with the delegate (Transcript, p.5) and in a further submission provided by the agent on 30 August 2017 (CB 148). There is nothing conflicting in these three accounts as to how the applicant obtained his Afghan Marriage Certificate;
 - c) the applicant did not indicate at his interview that his Taskera was issued after his Afghan Marriage Certificate by the Afghan Consulate. At that interview the applicant told the delegate (Transcript, p.5) that the Taskera had been issued in 2011 or 2012, a few months before he came to Australia and that his wife had

obtained the Afghan Marriage Certificate from the Consulate in Quetta “recently”;

- d) the information given by the migration agent on 30 August 2017 that the applicant had been issued with two taskeras by the Quetta Consulate was given in response to a question by the case officer as to why his Afghan Marriage Certificate made reference to “NIC No 16206701”. It should be noted here that the delegate who sent the email of 8 August 2017 mistakenly thought that the document containing the “NIC” number was a marriage certificate issued by the Quetta Afghan Consulate. In fact, the NIC number was only on the marriage certificate issued by the Mullah. This number was not present on the Afghan Marriage Certificate issued by the Consulate;
- e) the information given by the agent on 30 August 2017 regarding the two taskeras was given in response to the delegate’s question about the NIC number on the marriage certificate issued by the Mullah. It was not information or evidence concerning how the applicant obtained his Afghan Marriage Certificate from the Afghan Consulate in Quetta; and
- f) the delegate’s conclusion that the applicant provided conflicting evidence regarding how he obtained this certificate was illogical and constitutes a lapse in logic that gives rise to jurisdictional error.

95. The applicant’s oral submissions through Mr Blades as Counsel were as follows:

- a) the delegate engaged in illogical reasoning on the way to reaching the final decision that there were inconsistencies; and
- b) the agent’s response regarding the applicant having two taskeras (while incorrect) was addressing a separate question and not concerned with explaining how the Afghan Marriage Certificate from the Afghan Consulate was obtained.

Minister's submissions

96. In relation to ground 3, the Minister, through Ms Graycar, as Counsel argued that:
- a) the delegate placed no weight on the Afghan Marriage Certificate because of the prevalence of document fraud in Quetta, Pakistan;
 - b) the delegate also referred to inconsistencies between what was said in the visa application, where the applicant indicated that he had obtained the Taskera and the Afghan Marriage Certificate when he married his wife and what was said at the interview, which was that he obtained the Taskera sometime after his marriage;
 - c) the applicant explained that his wife had obtained the Afghan Marriage Certificate recently but, in relation to it showing a date of 2011, stated that was the date of marriage – not the date of issue; and
 - d) nothing put to the delegate by the applicant or his representative, nor by the applicant to this Court, would indicate that the delegate's finding that no weight would be accorded to the Afghan Marriage Certificate (which is the only relevant finding about it) could render that finding illogical so as to meet the test that, in effect, the finding was not open to the delegate.

Consideration

97. The submissions made in relation to this ground of review were somewhat confusing.
98. Although not entirely clear, it appears that the particular finding the applicant takes issue with is at CB 165-166, as follows:

I am satisfied that the Afghan Taskera is a bogus document on the basis of the following information:

...

- *The applicant's TPV application indicates he was issued with a Taskera and a Marriage Certificate when he married his wife at the Afghan Consulate in Quetta.*

At his TPV interview I asked the applicant if his Marriage Certificate had been issued at the same time as his Taskera as I noted the documents he provided at his TPV interview (located in document 'ISU124-Identity documents provided at TPV interview') contained significantly different dates of issue (3/04/2011 and 08/05/2012). The applicant indicated his Marriage Certificate had been recently issued by the Afghan Consulate in Quetta and was a copy of his marriage which took place in 2011. I put it to the applicant that his Marriage Certificate indicated it was issued in 2011 and contained no evidence it had recently been issued by the Afghan Consulate in Quetta. The applicant stated 'that's how they do it. They just state the date of marriage'. I asked the applicant when his Afghan Taskera was issued and he indicated it had been issued a few months before he came to Australia. At his TPV interview the applicant indicated his Taskera was issued after his Marriage Certificate by the Afghan Consulate in Quetta and provided no evidence that he had previously been issued with another Taskera in Pakistan. In his migration agent's submission dated 30 August 2017, however, it indicates the applicant was issued with two Taskeras in Pakistan and he used his first Taskera (which was subsequently lost) as evidence of his identity to obtain his Marriage Certificate from the Afghan Consulate in Quetta. Had the applicant been issued with two Taskeras in Pakistan as claimed in his migration agent's submission it is reasonable to assume he would have mentioned it at the earliest opportunity as part of his TPV application or at his TPV interview. His migration agent submissions offer no explanation regarding the conflicting evidence provided by the applicant regarding how he obtained his Afghan Marriage Certificate.

99. While the delegate did not place any weight on the Afghan Marriage Certificate in respect of the delegate's overall "Identity Findings", the delegate did place weight on the Afghan Marriage Certificate in respect of its finding that the Taskera was a "bogus document". It is clear from the above passage that inconsistencies in how the applicant obtained the Afghan Marriage Certificate was given weight in finding that the Taskera was a bogus document.

100. Arguably, the delegate “misstated” the evidence given at the interview in relation to the Afghan Marriage Certificate. However, the reference to this evidence was not used to undermine the entirety of the applicant’s evidence as to how and when he obtained his Afghan Marriage Certificate. It was one of many inconsistencies the delegate was highlighting. There were three bases upon which the delegate found the Taskera to be bogus. Insofar as the applicant suggests this misstatement evinces jurisdictional error, the Court is not satisfied that this is the case.
101. The Court notes its comments in ground 2 above in relation to the tests relevant to claims of illogicality.
102. Further, in *ARG15 v Minister for Immigration Border Protection* [2016] FCAFC 174 at [47] (“*ARG15*”) it was held that irrationality and illogicality need not be confined to the end result. Rather, the fact finding that leads to the end result is not immune from being found to be illogical and irrational. Here, the Court is assuming that what is being argued is that the delegate finding that the applicant had provided conflicting evidence regarding how he obtained his Afghan Marriage Certificate was illogical. It appears to be suggested that as this illogical finding was used as a basis on which the delegate was satisfied the Taskera was bogus, relying on this illogical premise has impugned the entire finding: *ARG15* at [47].
103. It is necessary to set out the way in which the applicant presented his evidence as to how he obtained his Afghan Marriage Certificate to determine if it was “illogical” for the delegate to find the applicant gave “conflicting evidence”.
104. In the applicant’s initial statement he said (CB 77):

...but I was issued a Taskera and marriage certificate when I married my wife by the Afghanistan Consulate General in Pakistan

...

My wife sent my marriage certificate to Australia from Pakistan a few days ago. I will endeavour to provide the original at the time of my interview with the Department. I will ask my wife if she has

my original taskera, and if she has it in her possession, I will ask her to send it to me in Australia.

105. At the interview with the delegate, the following conversation is recorded (Transcript, p.5):

Delegate: The applicant has also provided me with [shuffling and indistinct] Marriage Certificate. Which is issued from the Consulate General of the Islamic Republic of Afghanistan, Quetta

...

So was your Afghan Marriage Certificate, or was the Marriage Certificate that was issued at the by Consulate General in Quetta by Consulate General of Afghanistan in Quetta, was this certificate was issued at the same time as your Taskera?

Applicant: No

Delegate: So what was the time period between the difference in [indistinct] Taskera and Certificate?

Applicant: So the person ... the marriage celebrant. .. he writes handwritten ones but my wife was able to go to Consulate of Afghanistan in Quetta and get this one. So this was issued recently but Taskera was issued in 2011 or 2012.

Delegate: Well this one says it was issued in 2011?

Applicant: Well, that was the date of Marriage. That's how they do it. They just write the date of marriage.

Delegate: So you're saying this has recently been issued?

Applicant: Yes.

Delegate: So when was the Taskera issued?

Applicant: In 2011 or 2012, it was a few months before I came here

...

106. The information supplied in response to the invitation to comment was (CB 148):

The applicant approached the Afghanistan Consulate in Quetta with his marriage certificate from the mullah, his taskara obtained from the Afghanistan Consulate in Quetta and witnesses. He was then supplied with this marriage certificate.

...

107. In the Court's view, it was reasonably open for the delegate to find that the applicant's account of how, and when, he obtained his Afghan Marriage Certificate was inconsistent.
108. The applicant had stated in his initial statement that he was issued the Afghan Marriage Certificate and his Taskera from the Afghanistan Consulate General in Pakistan at the same time (ie, in 2011 when he married his wife). This version of events then changed at the interview. At that interview, the applicant indicated that he did not receive the documents at the same time.
109. The applicant had stated: "my wife was able to go to Consulate of Afghanistan in Quetta and get this one" (Transcript, p.5). His representative's submissions stated that *the applicant* approached the Afghanistan Consulate in Quetta to obtain the Afghan Marriage Certificate (CB 148). These evidence inconsistencies.
110. There were discrepancies in the dates of the two documents. The Taskera was issued in May 2012, while the only date on the Afghan Marriage Certificate was May 2011. This did not accord with the applicant's evidence that the Afghan Marriage Certificate and Taskera were issued at the same time (as indicated in his initial statement) – nor with his evidence that his wife had obtained the Afghan Marriage Certificate more recently (as stated in the interview). The explanation offered ("they just write the date of marriage" on the marriage certificate) was inferably not accepted by the delegate – which, arguably, is why the delegate sought further comment from the agent in the invitation to comment.
111. Here, it was open to the delegate to find that the applicant's account of how and when he obtained the Afghan Marriage Certificate was conflicting. On the basis of the materials before the Court, the Court is satisfied that the conclusion that the evidence the applicant gave was conflicting was not a matter which no rational or logical decision

maker could have arrived at: *SZMDS* at [131]. The finding was not unreasonable, arbitrary or capricious, and was open on the evidence to be made: *SZMDS* at [131] and [135].

Ground 4

112. Ground four of the amended application reads:

The Delegate's finding, for the purposes of s 91WA(2)(a) of the Act, that the applicant does not have a reasonable explanation for producing a bogus document, was irrational, illogical or unreasonable.

Particulars

- a. *Subsection 91WA(1)(a) of the Act relevantly provides that the Minister must refuse to grant a protection visa to an applicant for a protection visa if the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship.*
- b. *Subsection 91WA(2)(a) of the Act relevantly provides that subsection (1) does not apply if the Minister is satisfied that the applicant "has a reasonable explanation for providing the bogus document".*
- c. *At the TPV interview on 07 December 2016 the applicant provided a copy of his Afghan Taskera which he said had been issued by the Afghan Consulate in Quetta (CB 165), and provided explanations for providing that document at the interview and in subsequent submissions made on his behalf (CB 118).*
- d. *The Delegate found that:*
 - i. *the Afghan Taskera is a bogus document; and*
 - ii. *the applicant "does not have a reasonable explanation for producing a bogus document in support of his TPV application"; and*
 - iii. *therefore it must refuse to grant the applicant a protection visa under s 91WA(1) of the Act (CB 167).*
- e. *The Act, by subsection 91WA(2), required the Delegate not to refuse the visa on the basis of providing a bogus*

document if the Delegate had reached a state of satisfaction that the applicant had provided a “reasonable” explanation for providing the document found to be bogus.

- f. The word “reasonable” in s 91WA(2) connotes an explanation that is not fanciful, that is believable in the circumstances and which has sufficient rational connection to how and why the bogus document was provided.*
- g. On the evidence before the Delegate, it was not reasonably open to the Delegate to conclude that the applicant had not provided a “reasonable explanation” for producing the bogus document as that expression is defined in the authorities.*
- h. Accordingly, the Delegate’s finding that the applicant does not have a reasonable explanation for producing a bogus document was irrational, illogical or unreasonable.*

Applicant’s submissions

113. In relation to ground 4, the applicant submitted:

- a) the explanation provided by the applicant was objectively reasonable; that is, the explanation was not fanciful, is believable in the circumstances and has a sufficiently rational connection to how and why the bogus document was provided;
- b) in the present matter, a reasonable delegate could only reach one conclusion on the basis of the explanation given by the applicant for providing the document that the delegate believed was bogus (the Taskera) – that conclusion is that the applicant’s explanation (that he obtained the Taskera from the Consulate in Quetta, that he had attended there himself, had given details of his father and his village and District in Afghanistan and had paid the fee) was “reasonable” within the meaning of s.91WA(2)(a);
- c) the delegate conflated the reasons for finding that the Taskera was bogus with the reasons for finding that the applicant had not provided a “reasonable explanation” for providing the bogus document;

- d) this is evident from the delegate's statement that: "The applicant has not satisfactorily explained the numerous inconsistencies in his previous testimony regarding how he obtained his Afghan Taskera";
- e) the question whether the applicant had satisfactorily explained inconsistencies in his previous testimony regarding how he obtained the Taskera was logically a separate inquiry under s.91WA(1) in relation to whether the document was bogus. The inquiry as to whether there was a "reasonable explanation" for providing the bogus document was a separate one under s.91WA(2); and
- f) there was no intelligible justification given by the delegate for the finding that the applicant's explanation given in accordance with s.91WA(2)(a) was not "reasonable" and, accordingly, the delegate's conclusion as to the inquiry mandated by s.91WA(2) was itself illogical.

114. The applicant's submissions at hearing included:

- a) the legislation required the delegate to consider whether the applicant has a reasonable explanation for providing the Taskera;
- b) the explanation provided was that the applicant obtained the document from the Quetta Consulate. When you look at the delegate's decision it is clear the delegate has not grappled with that explanation and made a determination as to whether it was reasonable or not;
- c) the delegate has simply said that the applicant had not satisfactorily explained the numerous inconsistencies in his previous testimony regarding how he obtained the Taskera. This is a reference to the first question of whether he provided a bogus document – not the reasonableness of the explanation;
- d) the applicant did provide an explanation and the delegate did not consider whether or not it was reasonable. Rather, the delegate simply just went on to find that the inconsistencies meant that the explanation was not reasonable;

- e) to the extent that the delegate did purport to make findings on whether it reasonably suspected the applicant had provided the department with a bogus document that only goes to the same issues that are determined under s.91WA(1);
- f) the delegate has conflated the two areas of consideration and has not addressed whether the applicant's explanation for providing the bogus document was reasonable;
- g) the delegate has simply gone back to the original reasoning, based on country information and on the alleged inconsistencies, that there was a bogus document to determine the explanation was not reasonable;
- h) the explanation met all of the criteria to be considered "reasonable" and the consideration of s.91WA(2) of the Act was flawed or miscarried or evinces jurisdictional error; and
- i) regardless of what the delegate found in relation to other matters concerning credibility, the point that the delegate had to address was the question posed by s.91WA(2), which was whether the applicant had provided a reasonable explanation. The delegate did not do that.

Minister's submissions

115. In relation to ground 4, the Minister contended in written submissions that:

- a) ultimately, the finding that no reasonable explanation had been provided followed from the negative credibility finding made by the delegate about what had been said by the applicant, particularly when inconsistencies or apparent issues had been put to him for comment;
- b) not only did the delegate set out what was found to be the difficulties with accepting the applicant's evidence ("willingness to mislead; obscure the truth and change his accounts") but the delegate also clearly considered whether these concerns were explicable by factors such as stress, misunderstanding, differing recollections, or interpreting errors;

- c) in these circumstances, it can clearly be seen that the delegate gave a detailed explanation for the credibility findings and carefully explained, by way of detailed exposition, the basis for not believing many aspects of the applicant's claims that he was not an Afghan citizen and that his Taskera was bogus;
- d) it was open to the delegate not to be positively satisfied that there was a reasonable explanation for the provision of the document found to be bogus;
- e) for the applicant to make out his case, he would need to establish "extreme irrationality" and be able to identify to the Court a finding that no reasonable decision maker could have made on the evidence before the delegate; and
- f) it is not for the Court to substitute its view of the correct and preferable finding. Rather, the role of the Court, in relation to the ground as pleaded, is to consider whether the finding made by the delegate was open to the delegate. That finding, for which the delegate has provided an evident and intelligible justification, was clearly open.

116. In oral submissions, Counsel for the Minister stressed that this is a case where the delegate found that the applicant's account on a number of matters (particularly in relation to the documents and his identity) was not credible. It was this lack of credibility that was the underlying foundational point relevant to the delegate's determination that the Taskera was bogus and that the explanation for providing the document was unreasonable.

Consideration

117. Section 91WA states:

91WA Providing bogus documents or destroying identity documents

(1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:

(a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or

- (b) *the Minister is satisfied that the applicant:*
 - (i) *has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or*
 - (ii) *has caused such documentary evidence to be destroyed or disposed of.*
- (2) *Subsection (1) does not apply if the Minister is satisfied that the applicant:*
 - (a) *has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and*
 - (b) *either:*
 - (i) *provides documentary evidence of his or her identity, nationality or citizenship; or*
 - (ii) *has taken reasonable steps to provide such evidence.*
- (3) *For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.*

118. The applicant submitted that s.91WA evinces a two-stage test:

- a) first, determine whether there is a bogus document: the Act, s.91WA(1); and,
- b) if so, determine whether the applicant has provided a reasonable explanation and provides documentary evidence of their identity, nationality or citizenship or has taken reasonable steps to provide this: the Act, s.91WA(2).

119. Ground 4 proceeds on the basis that the first aspect of the test has been satisfied. The focus here is thus on the delegate's consideration in relation to the second stage of the test.

120. Both parties appeared to agree that what is meant by "reasonable explanation" is as discussed in *AIB16 v Minister for Immigration & Border Protection* (2017) 254 FCR 457 at [91]-[92] ("*AIB16*");

[91] *Without wishing to state the obvious, the provision requires there to be an explanation for the provision of a bogus document: that is, the narrative told must explain, and connect to, the provision of the bogus document. Second, the delegate must be satisfied the explanation is “reasonable”. The word reasonable connotes an explanation that is not fanciful, that is believable in the circumstances and which has sufficient rational connection to how and why the bogus document was provided. Reasonable minds between delegates may differ on this: see Minister for Immigration & Citizenship v SZMDS [2010] HCA 16; 240 CLR 611 at [131] per Crennan and Bell JJ.*

[92] *It is also obvious that for an explanation to be reasonable, it must first be accepted as genuine. Not all genuine explanations will be reasonable, but all reasonable explanations will be genuine.*

121. At the interview with the delegate, the following exchange took place when the applicant was asked to provide a “reasonable explanation”:

Interviewer: So from the information that you provided me with today, I reasonably suspect that this document is a bogus document, and that you’ve provided a bogus document to the department as evidence of your identity.

...

So do you have a reasonable explanation for providing a bogus document to the department. This is your opportunity to provide me with an explanation for why you’ve provided that document.

Applicant: So I’m not sure if it’s bogus, I’m not sure but I obtained it from Consulate.

Interviewer: How can you, how can you not be sure if it is bogus or not given what you’ve just said that you obtained it from the Afghan Consulate?

Applicant: Well you’re saying it’s bogus, that’s why I’m not sure. I went to the Consulate and obtained the document, they might have done something, bogus. It’s not that I did anything bogus.

...

Interviewer: So do you have any further comments first to all to make regarding the issuance of your Taskera in Quetta, Pakistan.

Applicant: I did not pay anyone outside the consulate to obtain that document, I went inside the consulate and obtained it.

Interviewer: Did you pay normal fee for the Taskera?

Applicant: Yes

Interviewer: So the Taskera is genuine?

Applicant: Yes it's genuine because I obtained it from inside the consulate

122. (Transcript, pp.17 and 19)

123. Part 4 of the delegate's decision referred to the various submissions made by the applicant's agent in relation to the invitation to comment, which asked that he "provide a reasonable explanation for producing a bogus document" (CB 107-110).

124. On 20 January 2017, the applicant's agent responded as follows:

- 1. In relation to the above the applicant wishes to clarify once again that he obtained the said document from the Afghan Consulate in Quetta. [The applicant] provided the office with his passport photo and information regarding his place of birth and in response the said office provided him with the taskera. As the applicant could not travel to Afghanistan he obtained the said document from Afghanistan Consulate in Quetta, Pakistan.*
- 2. We wish to submit that the documents were issued in respect of the visa applicant and does not purport to be issued for someone else.*
- 3. It is submitted that the document has not been altered by person who does not have the authority to do so.*
- 4. It is submitted that the documents were obtained by providing information which the visa applicant believed to be correct and true and not false or misleading at that time.*

5. *The applicant has consistently claimed ever since he was first interviewed that he obtained the document from Quetta. The applicant first submitted the document at the time of his entry interview and it has been on records since then. The document was submitted before the applicant received the invitation to apply for temporary protection visa.*
 6. *It is requested to please consider the above information as reasonable explanation for providing the said document.*
125. It is clear that the applicant consistently claimed that he had obtained the Taskera from the Quetta Consulate and that the explanation for providing the documents was that he believed that it was genuine. Consistent throughout the process was the applicant's insistence that the documents were "genuine".
 126. On a reading of the delegate's reasons as a whole, the Court is not satisfied that the delegate conflated the two limbs of s.91WA of the Act.
 127. Having outlined the basis on which the delegate was satisfied that the Taskera was a bogus document (CB 165-166) – the first limb under s.91WA(1) – the delegate then turned to consider s.91WA(2).
 128. The delegate's consideration of s.91WA(2) provided as follows:

At the conclusion of his TPV interview, I advised the applicant that I reasonably suspected he had provided the Department with a bogus document and I invited him to provide a reasonable explanation for providing a bogus document to the Department. The applicant reiterated that he had obtained his Afghan Taskera from the Afghan Consulate in Quetta but he indicated he wasn't sure if it was bogus or not. As discussed above, his migration agent's submission, dated 30 August 2017 indicates the applicant was issued with two Taskeras in Pakistan – the original Taskera was lost by the applicant. I am aware that a departmental letter was sent to the applicant on 7 September 2016 which requested him to provide documentary evidence of his identity, nationality or citizenship for inspection by an officer of the Department. The departmental letter of 7 September 2016 advised the applicant that the Minister must refuse to grant his protection visa if he provides a bogus document as evidence of his identity, nationality or citizenship and the Minister is not satisfied that he has a reasonable explanation for providing a bogus document (located in document 'ISU-IMMI request-07.09.2016'). As discussed in

Part 4 below, a departmental letter was also sent to the applicant on 7 December 2016 which warned him again that he could not be granted a protection visa if he provided a bogus document to the Department. The departmental letter of 7 December 2016 also advised the applicant that I reasonably suspected he had provided the Department with a bogus document as defined by s5(1)(b) of the Act. The departmental letter of 7 December 2016 provided him with a further opportunity to provide a reasonable explanation for providing a bogus document in relation to his identity, nationality or citizenship. His migration agent responded with submissions on 20 January 2017 and 30 August 2017 which are further discussed in Part 4 below. As part of his migration agent's submissions the applicant reiterated his Afghan Taskera was a genuine document.

After carefully considering all the available evidence which includes concerns regarding his claimed identity and nationality discussed throughout this Identity Assessment, I reasonably suspect that the applicant's Taskera is a counterfeit document as defined by s5(1)(b) of the Act – I do not accept it was genuinely issued by the Afghan authorities in Quetta. Information before the Department (located in document 'ISU124-Advice from Islamabad Post') indicates that Afghan Consulates do not hold the authority to issue Taskeras. I am also aware that all Afghans are required to 'return to their family's place of residence, or to Kabul, to apply for [a] Tazkera'.²⁴ As country information indicates Taskeras are only issued inside Afghanistan and the applicant claimed he was issued with a Taskera from the Afghan Consulate in Quetta, Pakistan; I find his Taskera is not a genuine document. The applicant has not satisfactorily explained the numerous inconsistencies in his previous testimony regarding how he obtained his Afghan Taskera. As discussed below in the Identity Finding, the weight of evidence before me indicates the applicant is a Pakistani national.

The applicant claims his Afghan Taskera is genuine and I find he does not have a reasonable explanation for producing a bogus document in support of his TPV application.

129. (Emphasis added)

130. The above emphasised portions intimate that the findings in relation to the "Identity Assessment" have informed the consideration of s.91WA(2).

131. In this regard, the Court highlights the following analysis in the delegate's findings in relation to the "Identity Assessment" (CB 168):

I have considered the consistency of the applicant's claimed identity, life story and family composition with his biometrics, identity documents presented, departmental records, systems checks and open source material including country of origin information. I have taken into consideration the applicant's explanations for the inconsistencies in his biography which he put forward at his TPV interview and his various written submissions; however, I have formed the view that the applicant has not satisfactorily explained the inconsistencies with regard to his biography and identity documents which raise doubts that his identity is as claimed. The weight of evidence before me indicates the applicant is a member of the indigenous Hazara community in Pakistan. There is no credible evidence before me to support the applicant's claim that he is an Afghan citizen born to undocumented Afghan refugees who live in Pakistan. At his TPV interview I did not find the applicant to be a credible witness. He demonstrated a willingness to mislead, obscure the truth and change his accounts of his identity and his biography. The applicant was given several opportunities to reconcile his evidence during his TPV interview, including after a natural justice break, however at the end of this he was unable to provide a resolution to my numerous concerns concerning his previous evidence.

The concerns I have with the applicant's evidence is not simple inconsistencies or gaps in his evidence that can be explained by stress, fear, misunderstanding, a differing recollection or interpreting error. With reference to his migration agent's submission, dated 30 August 2017, I do not accept that the applicant is illiterate and therefore unaware how his Taskera was issued by the Afghan Consulate in Quetta. The applicant's TPV application indicates he attended school in Pakistan between 1995 and 2002 and at his TPV interview he indicated he was using social media to communicate with his family in Quetta. I find the applicant can read and write and has knowingly provided false information throughout his dealings with the Department. In reaching a decision on the applicant's identity I place a great deal of weight on the fact that he has provided false and misleading information regarding his biography and his identity throughout his dealings with the Department.

132. As an aside, the Court notes that the applicant submitted that he did not instruct his agent to make the submission that he was illiterate. At

hearing, Counsel for the applicant expressly stated to the Court that this was not an allegation of fraud. Rather, it was simply negligence or incompetence. Having accepted that explanation, the Court has not treated this issue as a ground of review and will not, accordingly, consider it further.

133. Clearly, the delegate had significant concerns with the credibility of the applicant's evidence. It cannot be seen as illogical for the delegate to find that his explanation for providing the Taskera (ie, that he believed it to be a genuine document) was not, in fact, genuine. The delegate refers to the applicant demonstrating a willingness to mislead, obscure the truth and change his accounts of his identity and his biography. Put simply, the delegate did not believe the explanation provided.
134. The Court accepts that the applicant's explanation is not fanciful. Nonetheless, it was open to the delegate to find, on the basis of the delegate's views about the applicant's credibility overall, that the explanation provided was not reasonable. All reasonable explanations will be genuine but in circumstances where the explanation provided is not believed or considered genuine, it is open to the delegate to find that it is unreasonable: *AIB16* at [92].
135. While a different delegate might have reasoned otherwise, it cannot be said here that no reasonable decision-maker could not have come to the same conclusion on the basis of the materials and evidence before the delegate: *SZMDS* at [135].
136. Ground 4 fails to disclose jurisdictional error.

Conclusion

137. For the reasons provided above, the Court finds that there is no jurisdictional error demonstrated by the four grounds of review, or otherwise apparent in the delegate's decision.
138. The applicant's application for judicial review is, accordingly, dismissed.

I certify that the preceding one hundred and thirty-five (135) paragraphs are a true copy of the reasons for judgment of Judge Kendall

Date: 31 July 2019